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SH2461585 / FO2522830

EXHIBITS

A One (1) flash drive containing a scanned copy of the Homicide investigation book (volumes 1 and 2), Digital Photographs and Associated Reports of file # 018-11924-0291-013.

B One (1) CD containing scanned copy of the Supplemental Homicide investigation book.

C Memorandum from the Los Angeles County District Attorney's Office Justice System Integrity Division to Captain Kent Wegener, dated February 26, 2020.

D One (1) CD containing 911 calls and radio traffic

E One (1) CD containing surveillance video

MISCELLANEOUS DOCUMENTS

(6) Signed Administrative Rights (Sworn & Non-Sworn) Forms and corresponding marked reference maps

Executive Department State of California – Executive Order N-40-20

POST training records and range qualification records of involved employees Deputies Nikolis Perez and Jonathan Rojas.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOSEPH P. ESPOSITO • Chief Deputy District Attorney
VICTORIA L. ADAMS • Assistant District Attorney

JAMES GARRISON • Director

February 26, 2020

Captain Kent Wegener
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Anthony Vargas
J.S.I.D. File #18-0340
L.A.S.D. File #018-11924-0291-013

Dear Captain Wegener:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 12, 2018, fatal shooting of Anthony Vargas by members of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

By

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Nikolis Perez, #[redacted]
Deputy Jonathan Rojas, #[redacted]

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MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Anthony Vargas
J.S.I.D. File #18-0340
L.A.S.D. File #018-11924-0291-013

DATE: February 26, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the August 12, 2018, fatal shooting of Anthony Vargas by Los Angeles County Sheriff's Department (LASD) Deputies Nikolis Perez and Jonathan Rojas. It is our conclusion that Perez and Rojas acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of the shooting on August 12, 2018, at approximately 3:45 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on police reports, autopsy report, forensic analysis, audio recordings and video surveillance submitted to this office by Sergeant Robert Martindale and Detective Dean Camarillo, LASD, Homicide Bureau. Deputies Perez and Rojas provided voluntary statements which were considered as part of this analysis.

FACTUAL ANALYSIS

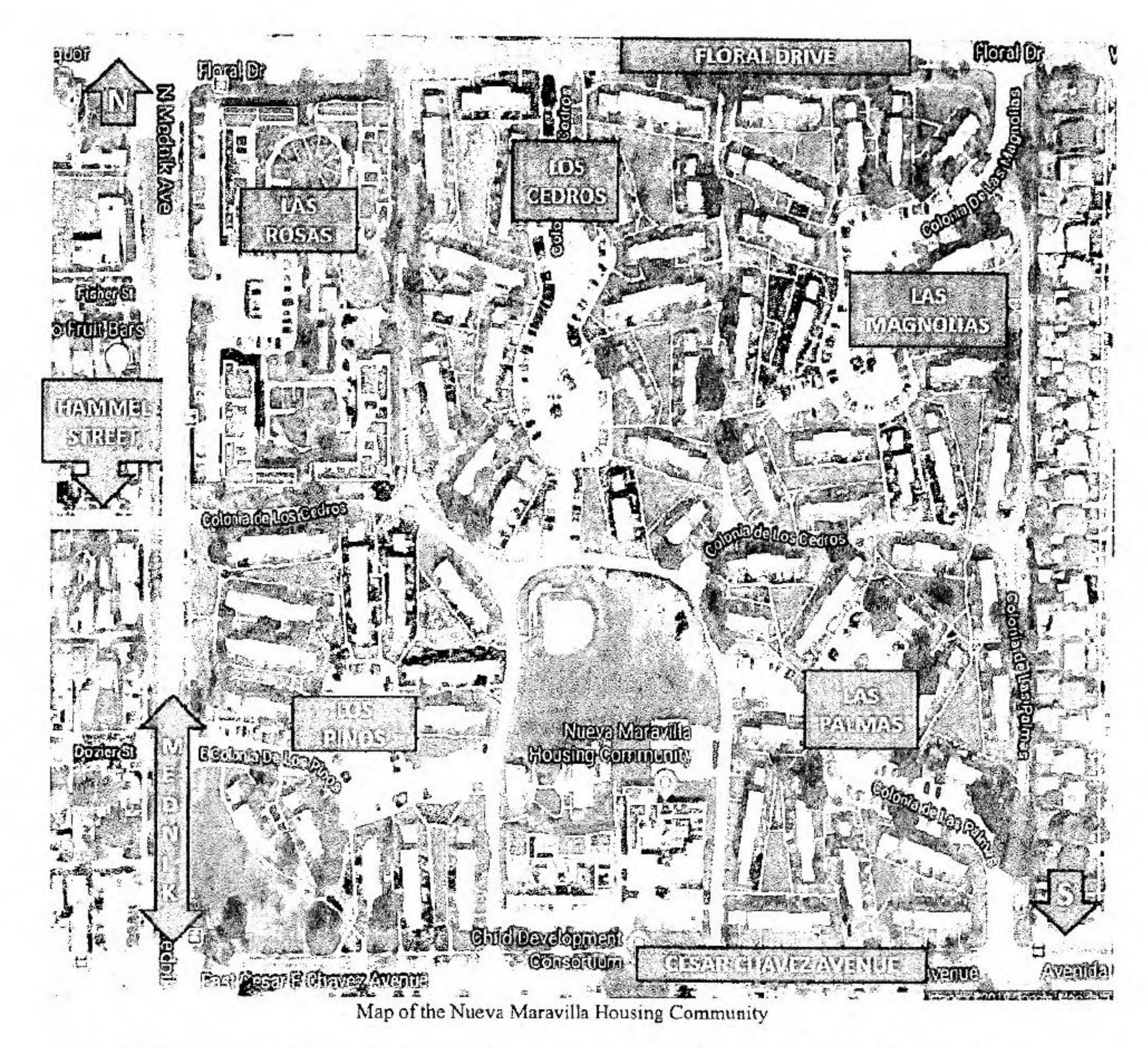
On August 12, 2018, at approximately 12:00 a.m., [redacted] drove to East Los Angeles to meet his [redacted] for a late meal. David H. parked his vehicle on Floral Drive near Mednik Avenue in the East Los Angeles area of Los Angeles County. [redacted] met [redacted] at his vehicle and they drove together in her vehicle to a nearby Denny's restaurant. After eating, [redacted] and [redacted] had an argument and [redacted] decided to walk to his car alone. [redacted] walked north on Mednik Avenue toward Floral Drive and observed a group of men on the east side of the street. One of the men approached on a bicycle, holding what appeared to be a gun wrapped in a bandana. The man demanded his wallet. [redacted] showed the man that he had no money in his wallet. The man then ordered [redacted] to give him his watch. In fear for his life, [redacted] complied. The man took [redacted] watch and fled the location.

[redacted] called [redacted] on his cellphone and told her what happened. [redacted] picked [redacted] up in her vehicle and they drove around the area looking for the suspects. As they approached Mednik Avenue and Hammel Street, [redacted] observed a group of ten to 15 men standing in front of the Nueva Maravilla Housing Community. The man who had robbed him was part of the group. [redacted] parked her vehicle on Hammel Street, west of Mednik Avenue.

[redacted] called 9-1-1. She advised the operator that approximately ten minutes earlier, three men had stolen her [redacted] watch at gunpoint.[1] [redacted] provided a description of the suspects and advised that the suspects were currently standing on the grass outside of the Nueva Maravilla Housing Community at Hammel Street and Mednik Avenue.

The Nueva Maravilla Housing Community (Maravilla) is a sprawling, public housing complex operated by the Los Angeles County Development Authority. It has 70 buildings housing 541 residential units. Maravilla is bordered to the north by Floral Drive, to the south by Cesar Chavez Avenue, to the west by Mednik Avenue and a block wall to the east, separating it from a residential neighborhood. Maravilla is separated into five smaller communities. Two of those communities are Colonia de Los Cedros (Los Cedros) located on the north side of the property and Colonia de Las Magnolias (Magnolias) located at the northwest corner of the complex.[2] The apartment buildings in each community surround its own parking lot. The parking lots and communities are interconnected by walkways and fire access roads.

[1] [redacted] told investigators that the man with the gun was originally standing with two other men before he approached on the bicycle. One of the other two men handed the man on the bike the gun wrapped in a bandana.
[2] The other three communities are Colonia de Las Rosas, Colonia de Las Palmas and Colonia de Los Pinos. A sports field and community center are located between Los Pinos and Las Palmas on the south side of the property.



Map of the Nueva Maravilla Housing Community

LASD dispatch broadcast the robbery details, including the fact that the watch was stolen at gunpoint, and uniformed LASD Deputies James Duran and Adrian Rendon responded north on Mednik Avenue from Cesar Chavez Avenue. They observed three to four men run eastbound into Maravilla from Hammel Street. Simultaneously, [redacted] advised the 9-1-1 operator that the suspects ran into Maravilla when the deputies arrived on scene. Duran contacted [redacted] and [redacted] at their vehicle. Rendon advised uniformed LASD Deputies Nikolis Perez and Jonathan Rojas that the suspects were running east into Maravilla and told them to check Los Cedros.

Statement of Deputy Nikolis Perez

Perez and Rojas responded from the East Los Angeles Sheriff's station with their lights and sirens activated. Upon arrival, Perez observed Rendon and Duran contacting [redacted] and [redacted] on Hammel Street. Rendon told Perez and Rojas to head east toward Los Cedros, the suspects' last known direction of travel. Rojas drove to Los Cedros, but the deputies did not see anyone.

Perez and Rojas decided to head toward the Magnolias. In prior calls at Maravilla, suspects running from deputies frequently ran toward the Magnolias. Rojas drove onto the fire access road that runs through the property and headed east. Rojas then followed the access road as it veered north toward the Magnolias. At that time, Perez observed a man dressed in dark clothing, later identified as Anthony Vargas, on the west side of the road in front of their vehicle. Vargas looked toward the black and white patrol car and ran east across the road.

Rojas drove further north and stopped parallel to Vargas. Perez exited the patrol car and ordered Vargas to stop. Vargas fell to the ground, got to his feet and continued to flee. Vargas continuously reached toward his front waistband and looked back at Perez. Due to Vargas' actions, combined with the fact that a gun was used during the robbery, Perez believed Vargas was armed.

Vargas ran east along the north side of Building 43 and again fell to the ground. Vargas was on his knees with his right hand on the ground supporting himself. Perez approached Vargas' left side and pointed his service weapon at him. Perez ordered Vargas to show his hands. Vargas refused to comply. Vargas' left hand was at his waistband and not visible to Perez. Believing that Vargas was reaching for a gun, Perez grabbed Vargas' left hand and attempted to pull it from under his body. Perez ordered Vargas to give him his hands. Vargas refused to comply.

Rojas approached Vargas' right side and yelled, "He has a gun! He has a gun!" Fearing that Vargas was going to retrieve the firearm, Perez punched the back of Vargas' head two times in an attempt to get him to comply with his orders to show his hands. It had no effect. Perez broadcast over his handheld radio that they were involved in a fight and that Vargas was armed. Perez told Vargas, "I don't want to shoot you! I don't want to shoot you!" and continued to order him to give him his hands. Vargas ignored Perez and attempted to get to his feet. Perez struck Vargas' head three to four more times, to no effect.

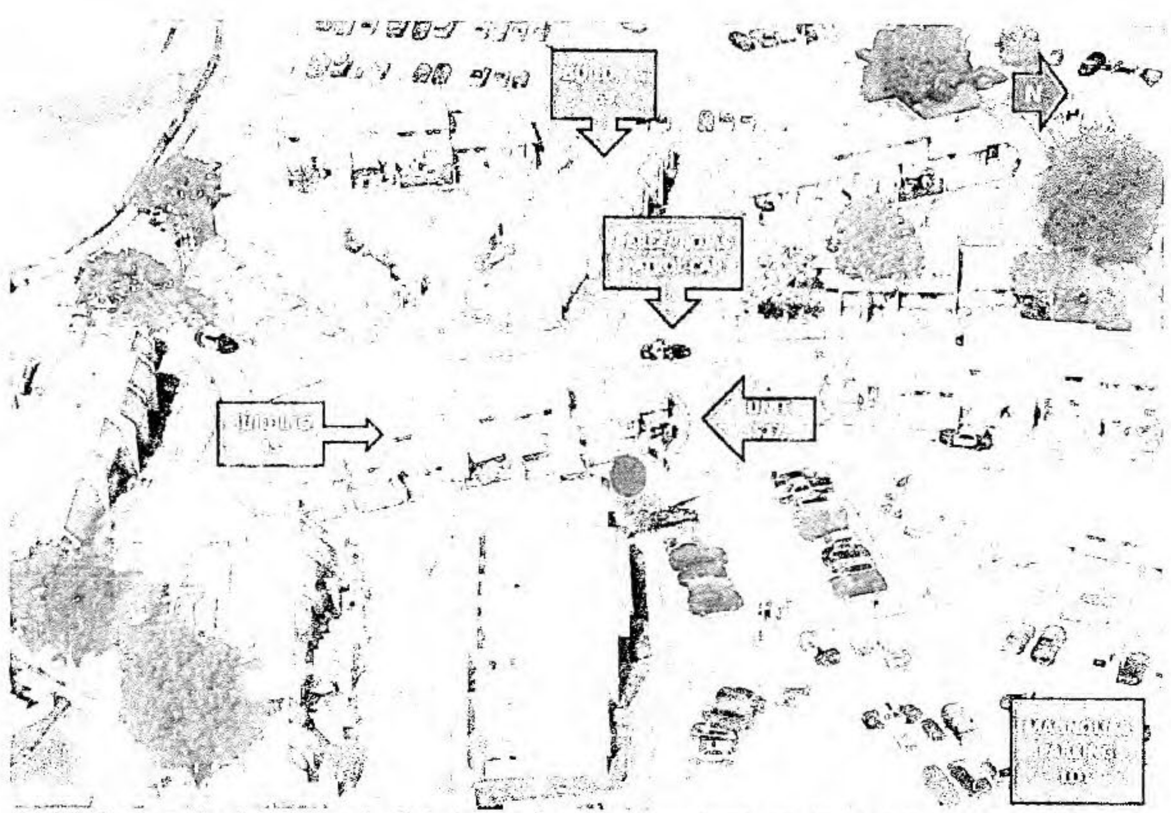
Vargas continued to attempt to get up from the ground. Vargas was significantly bigger than Perez.[3] While struggling with both deputies, Vargas was able to maneuver his body 180 degrees and "bear crawl" forward on the ground. Eventually, Vargas broke free from both Perez and Rojas. Vargas reached both hands to his waist as he rose to his knees. Rojas yelled, "Gun! Gun! He's going for his gun!" Perez, who had been on his knees during the struggle, got to his feet and was approximately three to four feet from Vargas. Believing that Vargas was about to kill him and Rojas with the gun Rojas observed, Perez drew his service weapon and fired six to seven rounds at Vargas.[4] Rojas also fired his service weapon. Vargas fell face down onto the

[3] Vargas was 5'10" and weighed 255 pounds. Perez is 5'10" and weighs 150 pounds. Rojas is 5'9" and weighs 190 pounds.

[4] An examination of Perez' service weapon determined that he fired seven rounds.

grass with his right hand under his body. Perez broadcast that shots had been fired and directed responding deputies to their location.

Responding units arrived and Vargas was taken into custody. A black semiautomatic handgun lay on the grass beneath Vargas. Deputies began to administer cardiopulmonary resuscitation (CPR) until paramedics arrived.



Aerial photograph taken during daylight hours after the deputy involved shooting. indicates where the shooting occurred. The Los Cedros parking lot is at the top of the photo.

Statement of Deputy Jonathan Rojas

Rojas and Perez responded to the Los Cedros parking lot after being directed there by Rendon. Rojas entered the parking lot from Floral Drive, but did not see anyone. Based on past experiences with suspects fleeing through Maravilla, the deputies decided to head to the Magnolias. Rojas drove onto the fire access road and headed east.

As the fire road veered north, Perez pointed to Vargas who was approximately 30 feet in front of their car, disappearing around the corner of a Building 43. Rojas drove further north and stopped the patrol car. Rojas observed Vargas stumble to the ground as Perez exited the car and chased him. Rojas exited and followed Perez. Rojas ran around Building 43 and saw Perez struggling with Vargas while ordering him to stop and get on the ground. Rojas ran to assist Perez. Vargas dragged Rojas and Perez 50 feet to the south before they could bring him to the ground. Vargas

landed on his stomach with his hands beneath him. Vargas was ordered repeatedly to give the deputies his hands. Vargas refused to comply.

Rojas was on Vargas' right side and Perez was on his left side. The deputies were attempting to pull Vargas' hands from beneath him. Rojas felt the butt of the gun protruding from Vargas' waistband. Rojas told Perez that Vargas had a gun. Perez broadcast over the radio that Vargas was armed. Rojas punched Vargas on his right side when he refused to give the deputies his hands. Vargas continued to resist the deputies. Vargas was constantly moving around and trying to get to his feet, preventing the deputies from gaining control of his hands. Rojas was in fear during what he described as a "very tough struggle," because he knew that Vargas had a gun.

At one point, Vargas got to his feet and took several steps before going back to the ground on his stomach. Rojas fell down next to Vargas' right side. Vargas hands were still tucked beneath him. Vargas rolled to his left side and raised his right upper body. Rojas could see the gun in Vargas' right hand, ready to fire. Rojas yelled, "Gun! Gun! Gun!" and removed his service weapon. Fearing that Rojas was about to shoot him, Rojas fired eight rounds at Vargas in a seated position from approximately five feet. Vargas fell to his stomach with his right hand beneath his body.[5]

Statement of Deputy James Duran

Duran was interviewing [redacted] and [redacted] when he heard Perez broadcast that they were involved in a fight. While Duran and Rendon were responding to the Magnolias, Perez broadcast that there had been a deputy involved shooting. They arrived and observed Rojas and Perez holding Vargas at gunpoint. Vargas was lying face down on the ground and was not moving. His right arm was tucked under his body. Duran and another deputy removed Vargas' right arm and handcuffed him. Vargas was rolled to his left side and Duran observed a black semiautomatic handgun beneath him. Duran administered CPR until medical personnel arrived to the scene.

Statement of Deputy Adrian Rendon

Perez broadcast that they were involved in a fight, immediately followed by "998."[6] Rendon drove to the Magnolias. Perez and Rojas stood next to Vargas who was lying face down on the ground. His hands were tucked beneath him. Rendon was advised that the gun was under him. When additional deputies arrived, Duran tried to pull Vargas' right hand from beneath his body. Rendon assisted Duran by pulling on Vargas' right shirt sleeve. Vargas was handcuffed and rolled to his side. Rendon observed a black semiautomatic handgun beneath him. Duran began chest compressions on Vargas.

Statement of Sergeant Sara Rodriguez

Rodriguez and LASD Sergeant Mario Castro were responding to the armed robbery call when she heard Perez' broadcast that he and Rojas were involved in a fight with an armed suspect.

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[5] A photograph of Vargas was shown to [redacted] indicated that Vargas was not the man who approached him on the bike and took his watch.

[6] "998" is the police code for shots fired.

Rodriguez and Castro immediately responded to their location. Upon arrival, Rodriguez observed Perez, Rojas and Vargas, who was lying face down in a grassy area. The deputies advised Rodriguez that Vargas was still armed with a handgun, which had been in his waistband.

Vargas' hands were tucked underneath his body. Castrol instructed the deputies to handcuff Vargas. Rodriguez noticed that the cord to Rojas' radio was wrapped around Vargas' right arm. As deputies moved Vargas to his left side, Rodriguez unraveled the cord and removed the radio from Rojas' gun belt. Rodriguez observed a black semiautomatic firearm "pop out" from Vargas' waistband when he was rolled onto his left side.

Statement of Sergeant Mario Castro

Castro and Rodriguez arrived to the Magnolias after Perez broadcast that he and Rojas were involved in a fight, followed by a shooting call. Rojas was standing to the right of Vargas, who was lying face down. Rojas' radio was dangling from his gun belt and the cord to the external microphone was wrapped around Vargas' right arm. Castro directed the deputies to handcuff Vargas.

Vargas' arms were beneath his body. Duran pulled Vargas' left arm out and placed a handcuff on his wrist. Deputies had trouble removing Vargas' right hand. Vargas was rolled to his left side and his right arm removed. Castro observed a black handgun on the ground underneath Vargas. Rodriguez unwrapped the cord from Vargas' right forearm. Vargas was handcuffed and deputies initiated CPR.

Canvas for Witnesses

Deputies went door-to-door to the surrounding buildings to locate any possible witnesses to the shooting. Five residents heard the gunfire but did not see anything. One resident indicated that he heard fighting followed by five to six gunshots. The investigation did not locate any eyewitness to the shooting.

Dispatch Recordings

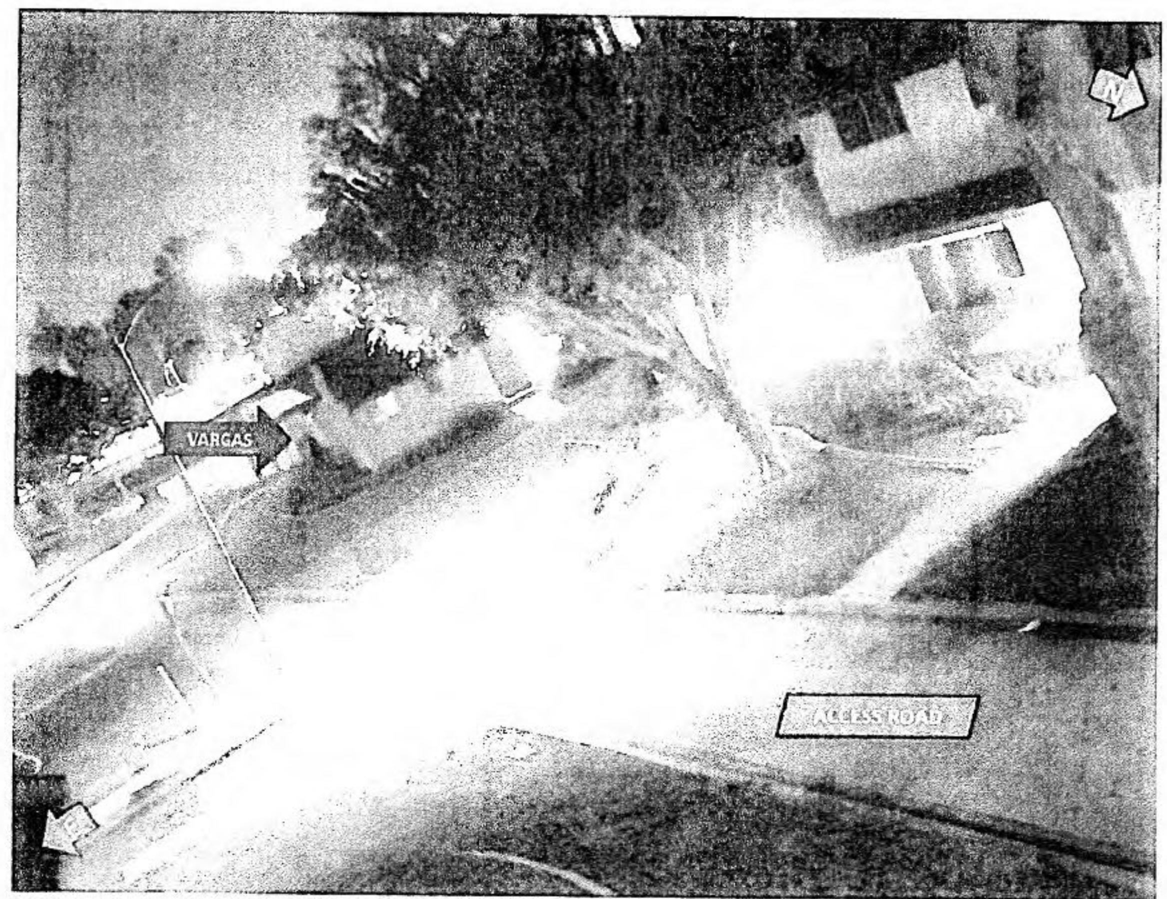
At 1:59 a.m., dispatch broadcast a call of a robbery that had just occurred at Hammel Street and Mednik Avenue. The suspects were described as three men, ages 35 to 40. It further stated that the victim had his watch stolen at gunpoint, and that the suspect with the gun was wearing a blue shirt. Rendon and Perez acknowledged the call. Approximately one minute later. Rendon broadcast that he and Duran were at the location and observed multiple men running through Maravilla. At 2:02 a.m., Perez advised dispatch that he and Rojas were at the scene. Rendon asked Perez and Rojas to check Los Cedros. At 2:05 a.m., Perez broadcast that he and Rojas were involved in a fight at the south corner of the Magnolias and that the suspect had a gun. Perez broadcast "998" 23 seconds later. Multiple units indicated that they were responding to the scene with lights and sirens. The first unit arrived approximately two minutes and 20 seconds after the 998 call. Rojas then broadcast that Vargas was down and the gun was under his lap and they needed additional units before clearing him.

Video Surveillance

There are numerous surveillance cameras throughout Maravilla. One captured the area where Perez and Rojas first observed Vargas. Another captured the area where the shooting occurred.

1. Building 44 Camera

Building 44 is located directly north of Building 43. Vargas appears on the east side of Building 59 and stands between the bushes and east wall. Approximately 15 seconds later, Vargas runs east across the fire access road. Perez and Rojas' marked patrol car approaches from the south and turns north on the road. Vargas continues running east out of view. The patrol car stops west of Unit [redacted] in Building 42, and Perez and Rojas exit and run east out of view.



Vargas standing on the east side of Building 59.

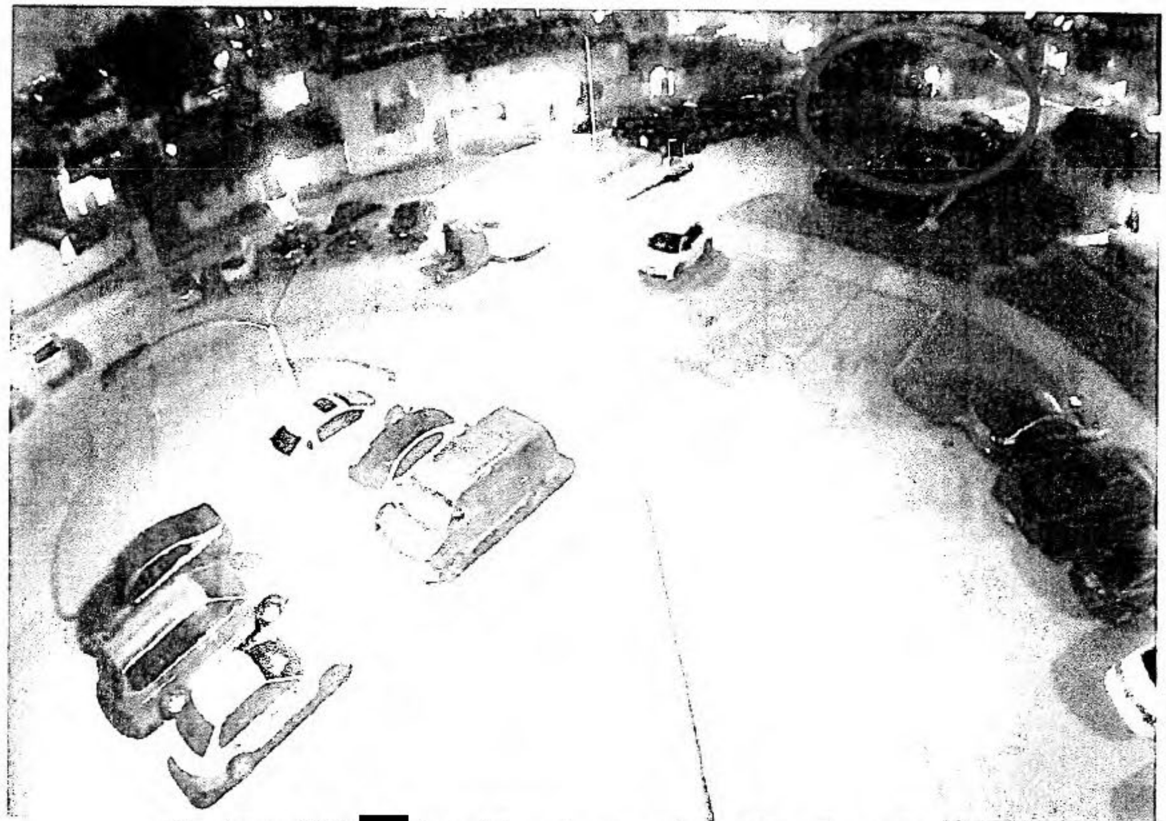


Vargas on the east side of the road as the patrol car comes into view.


Patrol car after Perez and Rojas exited and chased after Vargas.

2. Magnolias Parking Lot Camera

A camera is mounted atop a metal pole in the center of the Magnolias parking lot. It is approximately 150 to 175 feet from the shooting. The camera has four individual lenses which capture a 360-degree view. Camera angle 2 faces the area of the shooting. However, due to the distance and lighting, very little is visible.



The front of Unit [redacted] viewed from the camera in the Magnolias parking lot.

At approximately 2:06:07 in the video, a dark figure (Vargas) can be seen coming around the northwest corner of Building 43. Several seconds later, Perez and Rojas' marked patrol car stops on the access road just north of Building 43. At the same time, Vargas continues down the side of the building then heads south. Vargas appears to fall to the ground in front of Unit [redacted] At that time, a flashlight (Perez) can be seen following Vargas' path from the patrol car. Perez reaches Vargas in front of Unit [redacted] A second shadowy figure (Rojas) walks from the patrol car and joins Perez and Vargas. The distance and lighting makes it impossible to see what is occurring on the ground in front of the unit.

Firearm Evidence

The weapon recovered beneath Vargas was a black "Ruger SR22P" .22 caliber semiautomatic firearm. There was one live cartridge in the chamber and nine in the magazine. The gun was registered to an unknown party in the State of Arizona.



The firearm, magazine and live cartridges were examined and processed by the LASD Scientific Services Bureau, Chemical Processing Unit for latent prints. No latent prints were developed.

DNA Testing

The firearm was tested for the presence of DNA. Samples were taken from the grip, trigger, trigger guard, slide, frame, hammer, magazine and ten live cartridges. A DNA profile was not obtained from the grip, trigger and trigger guard.

DNA from two contributors was obtained from the slide, frame and hammer. At least one of the contributors was male. The DNA profile is approximately two times more likely if it originated from Vargas and an unknown individual than if it originated from two unknown individuals. This analysis provides limited support for the proposition that Vargas is a contributor to the DNA obtained from this sample.

The DNA profile obtained from the magazine contained an undetermined number of contributors. Due to the complexity of this DNA profile, it was unsuitable for interpretation.

An insufficient amount of DNA was detected in the sample taken from the live rounds.

Gunshot Residue Test

When a firearm is discharged, hot vapors originating from the primer material at the base of the cartridge escape the firearm through any area that is not air tight. These vapors quickly cool and condense into microscopic, metal-containing particles that fall on anything in the vicinity of the discharge of the firearm. Those particles are referred to as gunshot residue (GSR). The

formation, distribution, deposition and loss of GSR vary and are influenced by many factors including, but not limited to, environment, type of ammunition and firearm and the physical activity of the subject tested. When GSR is identified, the conclusion is that the object or person was in an environment of GSR, nearby when a firearm was discharged, or came in contact with a surface that had GSR on it. The presence of GSR on surfaces sampled does not reveal how they arrived there.

A GSR test was conducted on the right and left hand of Vargas. Both samples contained five or more particles that are characteristic of GSR. The finding of characteristic particles indicates that Vargas may have discharged a firearm, been in the vicinity of the discharge of a firearm, or touched a surface with gunshot residue on it.

Autopsy Report

Vargas was declared deceased at the scene. Los Angeles County Deputy Medical Examiner Timothy Dutra, M.D., performed a postmortem examination of Vargas on August 17, 2018. Vargas' death was ascribed to gunshot wounds of the head and torso.

Vargas sustained one gunshot wound to the head that entered behind the left ear and had a downward and rightward path. He sustained a grazing wound to the back of the head that had an upward and rightward path. Vargas sustained ten gunshot wounds to the back and rear shoulder. Seven of those wounds had an upward and leftward path. Three had an upward and rightward or slightly rightward path. Vargas also sustained a gunshot wound to the right posterior forearm that had a downward and rightward path.

During the autopsy, a blood sample was collected from Vargas for analysis. The toxicology report indicated that Vargas' blood tested positive for marijuana and methamphetamine.

LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury, (2) that the immediate use of force was necessary to defend against that danger, and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505*.

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with

the 20/20 vision of hindsight… The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

"Do not automatically reject testimony just because of inconsistencies or conflicts. Consider whether the differences are important or not. People sometimes honestly forget things or make mistakes about what they remember. Also, two people may witness the same event yet see or hear it differently." See, *CALCRIM No. 105*

CONCLUSION

Perez and Rojas were searching the Maravilla housing community for an armed robbery suspect. Vargas was standing alone in the dark at 2:00 a.m., between the bushes and east wall of Building 59, when the deputies turned north on the access road. Upon seeing the marked black and white police car, Vargas fled. Vargas' actions led Perez and Rojas to reasonably conclude that he may be one of the armed robbery suspects, and they therefore pursued him.

Perez ran after Vargas and observed him reaching into his front waistband. When Vargas fell to the ground for a second time, Perez attempted to gain control of Vargas' left hand, which was at his waistband and not visible. Vargas ignored multiple orders to show his hands. Rojas went to Vargas' right side and felt the butt of a gun in his waistband. Rojas alerted Perez to the weapon. The presence of the firearm immediately escalated the situation to a potentially deadly encounter for the deputies.

Vargas repeatedly ignored the deputies' orders to show his hands and continued to resist their attempts to gain control of them. Perez punched Vargas in the head and Rojas punched his right side in an effort to gain compliance, to no avail. Due to his large size, Vargas was able to overpower Perez and Rojas and break free from their grasp. Moments later, Rojas saw the handgun in Vargas' right hand. Rojas yelled, "Gun! Gun! He's going for his gun!" drew his weapon, and in fear of being shot, fired eight rounds at Vargas.

From his position, Perez never saw the gun in Vargas' hand. However, Perez had no reason to second guess his partner. Vargas was arming himself with a weapon and getting to his knees. Perez was in reasonable fear of his life, and the life of his partner, and he responded with reasonable deadly force when he fired his weapon at Vargas.

Perez and Rojas do not recall all the events during their struggle with Vargas in the same manner. For example, Perez stated that Vargas had risen to his knees when Rojas yelled that Vargas was going for his gun. Rojas recalled that Vargas had rolled to his left size and raised his upper right body when he saw the gun in Vargas' hand. As CALCRIM No. 105 states, the trier of fact should not automatically reject testimony because of inconsistencies or conflicts. Two people may see and hear the same event differently. People may honestly forget facts or make mistakes about what they remember. In this case, it should be noted that Perez and Rojas were involved in a fast-moving, stressful and potentially deadly struggle with Vargas. Furthermore, video surveillance corroborates the fact that Vargas attempted to flee from the deputies and refused to surrender. Additionally, Perez broadcast over the radio that Vargas had a gun during

the struggle, before the shooting. Responding deputies also corroborate the fact that Vargas was in possession of a loaded firearm. Duran, Rendon, Castro and Rodriguez observed the weapon beneath Vargas when he was rolled over to remove his right arm from beneath his body.

Finally, the autopsy report indicated that all of Vargas' gunshot wounds entered from the rear. This fact is not inconsistent with Perez and Rojas' statements. Rojas was on Vargas' right side when Vargas raised his upper body from the ground, exposing the gun in his hand. Rojas did not articulate his position in relation to Vargas at the time that he fired his weapon other than being in a seated position. Seven of the gunshot wounds sustained by Vargas were fired from right to left and in an upward direction, consistent with Rojas firing from a seated position to Vargas' right side. Perez was on Vargas' left side when Rojas yelled that Vargas was going for a gun. At that time, Vargas had broken free from Perez and risen to his knees. Perez could not see Vargas' hands at his waist, indicating that Perez was to his rear. The other six gunshot wounds sustained by Vargas were fired from left to right, consistent with Perez being behind Vargas and to his left, when he fired his weapon. The law does not require Perez and Rojas to wait until Vargas turns and faces them with a loaded firearm in his hands before defending themselves.

We conclude that Deputies Nikolis Perez and Jonathan Rojas acted in lawful self-defense and defense of others when they used deadly force against Anthony Vargas. We are therefore closing our file and will take no further action in this matter.